IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1370 OF 2004

Vijay Balasaheb Yadav .. Appellant

Versus

Uttam Pandurang Yadav & Ors. .. Respondents

Mr.M.L.Patil for appellant

Mr.R.V.More for respondents

CORAM : P.V.KAKADE, J.

DATE : 12th JULY, 2005.

P.C.:

1. This is an appeal preferred by the appellant against the judgment and order passed by Addl.District Judge, Sangli dated 5.8.2004 dismissing the appeal and confirming the judgment and order passed by Civil Judge, Junior Division, Sangli dated 14.8.2000 decreeing the suit for perpetual injunction and allowing the parties

to take water from the suit Well as per their rotation.

2. I have heard the learned counsel for both the parties. Perused the record.

3. The plaintiff filed the suit for perpetual injunction simplicitor in respect of the Well water allegedly located in the land of Gat No.156 of the said village. The plaintiff came with the case that both the parties had right to use the well water by rotation which aspect was challenged on behalf of the defendants no the ground that the suit well was totally different from the well which was said to be in gat No.156. In other words, according to the defendants, one well was located in Gat No.146 whereas the other well was in Gat No.156. It was the case of the plaintiff that defendants had manipulated the revenue records so as to show that there were two different wells, however, in fact there was one well having rights involved of both the parties.

4. The dispute was adjudicated by the learned trial judge on the basis of available evidence, who came to the conclusion that the plaintiff had proved that the

defendant no.2 was obstructing his right to take water from the common well of Gat No.156. It was further held that the defendant no.2 failed to establish that well in Gat No.46 was exclusively owned by the defendants and as such the suit came to be decreed. The appeal was carried to the District Court. The learned Addl. District Judge after hearing both the parties and on the basis of available evidence came to the conclusion that the findings recorded by the learned trial judge were proper and therefore, appeal came to be dismissed. Hence the present appeal.

5. At the outset, it may be noted that there is no substantial question of law involved in this appeal and both the courts below have decided the issue involved on the basis of factual evidence on record. The learned counsel for the appellant submitted that substantial question of law involved in this appeal was to the effect by virtue of Section 36A of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 the suit was barred and both the courts below had egnored statutory provision while decreeing the suit. However, on perusal of the judgment of both the courts below, who have discussed the evidence on record, quite

elaborately, and have come to the conclusion that there was an error apparent on the face of the record and therefore, that error was required to be rectified and hence certain directions were issued to the competent authority under the said Act. I am satisfied that bar of Section 36A of the said Act would not be applicable to the present dispute in the facts and circumstances as the evidence on record has sufficiently shows that there was mistake apparent from the record, which showed that there was well in Gat No.46 as well as Gat No.156. The findings recorded by both the courts below that there is only one well which was located in Gat No.156 around which the dispute is revolved not appears to be reasonable and correct. Suffice it to say that the Apex Court in the case of **Thiagarajan vs. Venugopalaswamy B. Koli** reported in **AIR 2004 SCC 1913** has held that when there are two views possible from the available evidence eon record, the High Court cannot substitute its own findings on appreciation of evidence merely on ground that another view was possible. Time and again it is held by the apex court that concurrent findings of facts howsoever erroneous cannot be disturbed by the High Court in exercise of the powers under Section 100 of the Civil Procedure Code. It is not within the domain of

the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate Court. This is applicable subject to the present case, when it is seen from the judgment of both the courts below that they have appreciated the evidence on record in legal and proper manner. It is also found that bar under Section 36A of the said Act would not be applicable to the present situation involved in this dispute and hence there is no merit in the appeal.

6. In the result the appeal stands dismissed with no order as to costs. Consequently Civil Application No.1831 of 2004 also stands dismissed.